INDEX

Citations

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 616

THE LEITER MINERALS, INC.,

Petitioner,

versus

UNITED STATES OF AMERICA, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

REPLY OR SUPPLEMENTAL BRIEF IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI.

ARGUMENT.

May It Please the Court:

1. But for the fact that the Court below has just rendered a decision which is completely at odds with the decision complained of in this case, petitioner would not

feel impelled to file a reply or supplemental brief in answer to the brief of the United States in opposition, as it is evident that the brief of counsel for the United States does not meet or overcome the contentions of petitioner and the authorities cited by petitioner in its petition.

However, quite by accident counsel for petitioner has just learned that the Court of Appeals for the Fifth Circuit rendered on February 2, 1956, a decision[1] which is wholly inconsistent with its decision in the present case and which further strongly supports petitioner's position herein.

In the *Gulf Refining Case* the pertinent facts and issues were:

Isaac R. Price, *et al.*, claiming to be the owners of several hundred acres of oil property in Plaquemines Parish, Louisiana,[2] filed in the United States District Court for the Eastern District of Louisiana a *petitory action*[3] against Gulf Refining Company, the oil, gas, and mineral lessee in possession of the property under lease from the State of Louisiana. The chief defense, or as the Court below expressed it, "the most serious issue", in the *Gulf Refining Case*, was whether or not the State of Lou-

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(1) **Gulf Refining Company v. Isaac R. Price, et al.**, No. 15,622, decided February 2, 1956, printed in Appendix "A" hereto, infra, p. 8, et seq., and referred to herein, for brevity, as "Gulf Refining" Case.

(2) By coincidence the property involved in the present matter is also located in Plaquemines Parish. There is no connection whatsoever, however, between the present litigation and the **Gulf Refining Case.**

(3) This is precisely the same type of action which was filed by petitioner in the State District Court, and which now is temporarily enjoined by the United States.

isiana, Gulf's mineral lessor, was an indispensable party to the petitory action brought by the Price group asserting title to the property.

The Court below in the *Gulf Refining Case* rejected Gulf's said defense, and held that Isaac R. Price, *et al.*, were entitled to proceed to judgment against Gulf to secure a decree recognizing the Price title as against the mineral lessee in possession under a mineral lease from the State of Louisiana.

In doing so the Court of Appeals relied on the same authority[4] and the same reasons which were relied upon by petitioner in the now enjoined and pending State Court case, as will be seen by the opinion of State District Judge Bruce Nunez upholding his jurisdiction prior to the time petitioner was restrained from proceeding further in the State Court, (R. 27-32, and especially at page 29).

Therefore, the Court below has now definitely sanctioned the bringing and prosecution of a petitory action by a title claimant against a defendant mineral lessee in possession where the lessor is the sovereign.

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[4] **Dreux, et al., v. Kennedy, et al.,** 12 Robinson (La. Reps.) 489, 504. This is the leading Louisiana case authorizing a petitory action to be filed and prosecuted against a person (such as a mineral lessee) holding under a lease or other color of right from the sovereign. It is noteworthy that in **Dreux v. Kennedy** that the alleged owner of the property—just as here—was the United States. There is obviously no distinction that can be drawn from the circumstance that in the **Gulf Refining Case** the lessor-sovereign was the State of Louisiana, and that in the present case the United States is the lessor, and indeed the Court of Appeals in the **Gulf Refining Case** rightly saw the problem as identical no matter which of the two sovereigns was involved.

An inevitable consequence of this holding is that the Fifth Circuit Court of Appeals has *now* held that the State District Court in and for Plaquemines Parish, Louisiana, *is* a Court of competent jurisdiction to hear, try and determine the presently enjoined State Court action; and it further follows that, contrary to what the Court of Appeals has previously stated in the decision complained of by petitioner, the Court below has *now* held that the United States is *not* an indispensable party to petitioner's petitory action in the State Court.[5]

It is accordingly submitted that the decision complained of by petitioner in the present matter and the decision of the same Court in the *Gulf Refining Case* are diametrically opposed; and the existence of these two directly conflicting decisions from the same Court below is an additional reason why the present petition for certiorari should be granted.

2. Although it would appear self-evident, it is further submitted that the brief for the United States filed in opposition to the present petition fails fairly to meet the arguments of petitioner.

Inter alia, counsel for the United States declare, in substance, (pages 6-7 and 10 of the brief of the United States in opposition) that petitioner does not question or seriously "attempt to meet" the propositions (1) that the United States is an indispensable party to the State Court title suit; and (2) that the Federal District Court has exclusive jurisdiction of this title action by the

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[5] The **Gulf Refining Case** was decided by a panel composed of Circuit Judges Borah and Jones, and Dawkins, (Sr.), District Judge. Circuit Judge Borah was the organ of the Court below in the opinion now sought by petitioner to be reviewed.

United States. These statements in the brief in opposition are factually inaccurate and are legally incorrect. Petitioner, on page 10 of its petition directly challenged the holding of the Court of Appeals that the District Court has exclusive jurisdiction to determine the title of the United States by pointing to the express contrary holding of this Court in the *Bank of New York & Trust Co. Case* (296 U. S. 479, 80 L. Ed. 339).

And petitioner has at all times contended that the State Court suit now enjoined was entitled to proceed even if the United States did not elect to intervene as a party plaintiff, the position of petitioner being that the United States is not an indispensable party to the State Court suit under the settled State and Federal jurisprudence, of which the decision of February 2, 1956, handed down by the Court below in the *Gulf Refining Case*, is now an additional and conspicuous example.

3. Again, it is noted that in footnote 1 of page 8 of the brief in opposition, counsel for the United States declare that "There may also be constitutional questions in regard to the validity and effect of the Louisiana statute."(6)

As we have already argued (pp. 13-15, petition for certiorari), it is just such constitutional questions that this Court has repeatedly held that it will not reach for at this juncture, so as to avoid a premature decision of, "or preliminary guesses" regarding, local law.

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(6) Act 315 of the Legislature of Louisiana for the year 1940, now Louisiana Revised Statutes 9:5805, printed in Appendix "A", p. 18, in the present petition for certiorari.

4. It should further be noted that the following statement in the brief in opposition, on page 12, that

> "Furthermore, the rights of the defendants in the state court suit, who are the Government's lessees, depend on the Government's title, and the Government could not be properly considered as a plaintiff",

is completely at variance with Louisiana law, as well as the *Bank of New York & Trust Co. Case, supra.*

As petitioner perhaps insufficiently pointed out in its petition, under Article 392 of the Louisiana Code of Practice, an intervener is "considered as plaintiff"; and under the controlling State jurisprudence, as exemplified by the latest case of the Louisiana Supreme Court,[7] an intervener does not become a defendant by intervening, nor does he thereby lose his identity in that of the original defendants. Said the Court in the case cited in Footnote 7:

> "It follows that while an intervener is considered as plaintiff, insofar as he must follow the jurisdiction of the defendant, he is, nevertheless a plaintiff in intervention who fights for his own hand; that is, he does not lose his identity in that of the original plaintiff, neither does he lose such identity in that of the original defendants."

If the United States should choose not to intervene as an "actor—voluntarily asserting what it deemed to be its rights—" in the presently enjoined State Court suit, the State Court in and for Plaquemines Parish has and had

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[7] State, ex rel. Pope v. Bunkie Coca-Cola Bottling Co., 222 La. 603, 63 So. (2d) 13, 14 (1953).

jurisdiction of the petitory action brought by petitioner against the mineral lessee and its sublessee, The California Company. State District Judge Nunez has already properly so held, and the Court below has now confirmed the validity of Judge Nunez's decision.

CONCLUSION.

For the reasons set forth in the petition already filed and in this reply or supplemental brief, the petition should be granted.

Respectfully submitted,

VANCE PLAUCHE,
SAMUEL W. PLAUCHE, JR.,
Counsel for Petitioner.

APPENDIX "A"

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 15,622

GULF REFINING COMPANY,

Appellant,

versus

ISAAC R. PRICE, ET AL.,

Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana.

(February 2, 1956.)

Before BORAH and JONES, Circuit Judges, and DAWKINS, SR., District Judge.

DAWKINS, District Judge: Appellees, plaintiffs below, some fourteen in number alleging themselves to be residents of Louisiana, Illinois, Iowa and California brought this petitory action claiming title to several hundred

acres of property,[1] in the Parish of Plaquemines, Louisiana, against Gulf Refining Company, appellant, a Delaware Corporation called Gulf. They alleged actual possession by defendant for more than one year, as required by the provisions of the Louisiana Code of Practice dealing with real actions (Articles 5 and 43) and that the value of the property in controversy exceeded the minimum jurisdiction of the court. Their claim of ownership was as "x x x sole and only heirs" of John Beckwith to whom plaintiffs alleged the State had issued patent No. 1965 on November 4, 1874, covering a larger area of several thousand acres belonging to the State at that time by virtue of its inherent sovereignty when admitted to the Union in 1812. The complaint was filed June 17, 1954.

On July 9th following, defendant, appellant, answered denying for want of information, the citizenship of plaintiffs, but admitting it was a corporation under the laws of Delaware. It also denied the value of the property was within the Court's jurisdiction. It responded to other articles of the complaint as follows: That Article IV alleging title in plaintiffs through the patent to Beckwith, duly recorded in the conveyance records, stated only a conclusion of law, which defendant would neither admit

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[1] "Lot 1 of Section 1, Lot 1 of Section 2, Lot 1 of Section 3, Lot or Section 5, Lot 1 of Section 6, Lot 1 of Section 7 and Lot 1 of Section 8, all of Sections 14 and 15, Lots 2, 3, and 4 of Section 17, South Half of Section 18, all of Sections 19, 20, 21, 22, 23, 24 and 25, North Half of North Half of Section 26, Northwest Quarter of Northeast Quarter, Northwest Quarter of Southwest Quarter and Northwest Quarter of Section 27, all of Sections 28, 29, 30 and 32, Northwest Quarter of Northeast Quarter, Northwest Quarter of Southwest Quarter and Northwest Quarter of Section 33 in Township 19 South, Range 18 East in the Southeastern Land District of Louisiana, east of the Mississippi River."

nor deny. It then admitted Articles V through XII, wherein plaintiffs' relation to an acquisition under the Beckwith patent, as well as other alleged transfers were recited, but denied possession in itself of the property as charged in Article XIII and XIV. Defendant then set forth at length its reasons for denial of possession[2] based mainly upon its alleged release of all rights which it had formerly held in Sections 22 and 27 as lessee.

Defendant further denied "it has at any time been in *illegal* possession of any portion of Sections 22 and 27, Township 19 South, Range 18 East, Plaquemines Parish, Louisiana", (Emphasis Added) but admitted,

> "x x x it has drilled wells in search of oil on said sections, which wells had been abandoned

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(2)"XIII. The allegations contained in Article XIII of plaintiffs' petition are denied and in this connection defendant shows that it is not in actual physical possession of any portion of Sections 22 and 27, of Township 19 South, Range 18 East, Plaquemines Parish, Louisiana; that it acquired a mineral lease designated as State Lease No. 195 from Southern Sulphur Corporation by instrument dated September 18, 1936, a certified copy of which instrument is attached hereto and marked 'Defendant-1', which instrument conveys the rights of Southern Sulphur Corporation in **Sections 22 and 27 aforesaid, among other property**; that the successors in interest to Southern Sulphur Corporation are Mrs. Bessie Franzheim, et al., being the transferees in instrument dated November 17, 1953, certified copy of which is attached hereto and marked 'Defendant-2'; that pursuant to the provisions contained in the instrument hereinabove designated as 'Defendant-1' and particularly paragraph VI thereof, defendant has executed a reconveyance of all rights acquired by it under said instrument to the successors in interest of Southern Sulphur Corporation, as they appear from the instrument herein described as 'Defendant-2' and the heirs, successors and assigns of such parties, as more fully appears from instrument dated July 6, 1954, a certified copy of which is attached hereto and marked 'Defendant-3', such reconveyance being limited to the rights acquired by this defendant as aforesaid in Sections 22 and 27 of Township 19 South, Range 18 East, Plaquemines Parish, Louisiana." (Emphasis Supplied).

long prior to the filing of this action, and defendant has exercised no possession over said property since such abandonment." It also averred *"x x x It is not in possession of any portions of Sections 22 and 27, Township 19 South, Range 18 East, Plaquemines Parish, Louisiana, and that it has no interest in said property and is not claiming possession thereof or any interest thereon; and defendant formally disclaims any right to possession of said property or any interest therein."* (Emphasis Supplied).

Copies of "Defendant-1", "Defendant-2" and "Defendant-3" referred to in answer to Article XIII of the Complaint (Footnote #2) were attached and constitute a considerable portion of the transcript in this case.

On August 24, 1954, plaintiffs moved for summary judgment, contending there was "no genuine issue as to any material fact, all as shown by affidavits and documents hereto attached" and prayed for judgment as demanded in its original complaint. This was followed on August 31st by complainants' motion "for leave to file documents in support of motion for summary judgment," which included among others, a certified copy of patent No. 1965 to John Beckwith covering property in Township 19 South, Range 18 East in Plaquemines Parish, a copy of plat of said township by L. N. Polk, Engineer and copy of plat of the same township by J. C. DeArmas, embracing the property sued for and other documents.

Thereafter, on September 8, 1954, Defendant moved to dismiss the motion for summary judgment, again aver-

ring as in its answer of July 9 that "x x x x such possession as defendant has had of the property in controversy has been in the capacity of lessee, and defendant in its said answer has further disclosed the name and identity of its lessor, which the state law requires complainants to make parties to this case or that the suit should be dismissed." On September 14th defendant also filed opposition to the motion for summary judgment for the reason (1) there was no jurisdiction of the subject matter, the value of the property involved not exceeding the sum of $3,000, (2) the affidavits and documents tendered by plaintiffs "were irrelevant and immaterial to any issue in the case x x x", (3) the record "affirmatively shows an indispensable party has not been brought into the action", (4) the record does not "disclose a justiciable controversy as to the ownership of the property", and (5) for these reasons "a motion for summary judgment is not authorized by Rule 56 of the Rules of Civil Procedure."

On the same day, September 14th, plaintiffs filed a motion to amend the complaint "in order to more fully show diversity of citizenship between all plaintiffs and defendant" as a basis for jurisdiction, disclosing that plaintiffs were citizens of Louisiana, Massachusetts, Illinois, Iowa and California, while defendant is a corporation under the laws of Delaware.

In this state of the pleadings, the motion for summary judgment was heard September 15, 1954, complainants offering the documents attached to their motion and calling attention to the various allegations in the complaint and answer, including especially the copy of the release

and reconveyance by defendant to its lessor, Southern Sulphur Corporation, and the latter's stockholders, executed July 8, 1954, the day preceding the filing of the answer. The matter was discussed at some length both by opposing counsel and the Court, was taken under advisement by the judge below and, on March 28, 1955, without opinion, he gave judgment in favor of plaintiffs, recognizing them "x x x to be the owners of the lands described in plaintiffs' complaint and removing and annulling, *as against defendant* Gulf Refining Company, any claim or pretensions in and to any portion of said lands adverse to plaintiffs' title." (Emphasis Supplied).

Defendant appealed and charges the following errors by the Court below:

(1) Holding that the subject matter in controversy exceeded $3,000.00;

(2) Holding that defendant's lessor was not an indispensable party and failing to sustain defendant's Motion to Dismiss;

(3) Holding that there was no genuine issue as to any material facts;

(4) Holding that the record disclosed a justiciable controversy of which the Court could or should take cognizance; and

(5) Holding that plaintiffs proved their ownership to the property described in the petition, and failing to hold that the proof showed the ownership of the property to be vested in the State of Louisiana.

ALLEGED ERROR NO. 1.

The complainant alleged a value exceeding $3,000, and supported it by affidavits and other documentary evidence, all of which were filed at the trial of the Motion for summary judgment under express order of the Court. Defendant offered no evidence, although the documents referred to and attached to its answer and motions were a part of the pleadings. The lands claimed by plaintiffs consisted mainly of water bottoms or submerged property, as to the value of which there was no other proof than that offered by plaintiffs. Defendant admitted it had drilled wells and removed oil from Sections 22 and 27 among other lands claimed by complainants, and that its derricks with placards thereon proclaiming its ownership, were still standing on the property in dispute at the time of trial. It was also made clear that defendant's attempted release back to its alleged lessors of the lands in Section 22 and 27, was executed between the time the complaint was filed on June 17, 1954, and the filing of the answer denying possession by defendant on July 9th. In this state of the record it can scarcely be contended that, if the amount in controversy was sufficient to give the Court jurisdiction when the suit was filed, it was lost by the subsequent attempt of defendant to divest itself of interest in a part of the property. Hence we hold that the Court below was correct in overruling the plea to the jurisdiction of the subject matter.

ALLEGED ERROR NO. 2.

This alleged error raises the most serious issue in the case, i. e., was the original lessor, the State, an indispensable party to this action involving the title of the land?

At the threshold the Court below found, according to the pleadings and "Defendant-3" referred to in the answer to Article XIII of the complaint (Footnote No. 2), defendant had divested itself of all claims and interest in Sections 22 and 27, immediately before answering as to which it claimed and could claim nothing, not even lawful possession.

Appellees concede that a petitory action must be brought by one out of possession against the actual possessor, if it has continued for more than one year, and that if such possession be as lessee, ordinarily he can relieve himself from further defending the title by revealing the name and address of his lessor (Art. 43, La. Code of Practice), but, in the present case, they contend Gulf lost that right by releasing and reconveying the leasehold to its lessors or assignors, who, themselves were only lessees. In this situation appellees say the Court had no alternative but to recognize their title, which on its face (a patent from the State) was good against defendant. They further concede the judgment below is binding only against Gulf, and that neither the State nor anyone else not parties to this suit, are deprived of the right to sue appellees in a direct action to test their claims to the property.

It will be noted by reference to "Defendant-1", attached to appellant's answer, the original assignment or sublease by Southern Sulphur Corporation to Gulf, dated September 18, 1936 embraced large areas in Plaquemines, LaFourche and Jefferson Parishes, which included lands claimed by plaintiffs other than Sections 22 and 27, Township 19 South, Range 18 East, Plaquemines Parish, Louisiana. No explanation is given for the release of these

two sections, from which appellees' counsel, in oral argument, charged without denial, Gulf had withdrawn many thousands of dollars worth of oil.

As stated earlier, the State, if it has any rights, has lost nothing and if it sees fit to sue the plaintiffs in this case for recovery of the property involved, issue can be joined and determined in a manner that will be binding upon all concerned.

In *California Company v. Price, et al.*, 225 La. 706, 74 So. 1, wherein these same appellees in a case to which the State was a party, were held to be the owners of *other portions of the lands covered by the patent to Beckwith of 1874*. In that case, the Supreme Court of Louisiana held the State was barred from attacking the patent by Act 62 of 1912 (L. S. A.-R. S. 9:5661, et seq.) which it declared to be a statute of repose against all persons, including the State. Of course, that was a concursus proceeding between the State, the present appellees and others, but in order to find for these heirs of Beckwith it held the patent immune to attack by prescription of six years by the State under this statute.

In the present case, the defendant knew, of course, appellees could not make the State a party to any suit without its consent, and could never quiet their title against the sovereign as long as it claimed ownership of the fee and declined to submit itself to the jurisdiction of the Courts. They also knew that the State was prohibited from divesting itself of the fee to the beds of streams and other navigable bodies of water by the Constitution of 1921 (Art. VI, Section 2), adopted after the issuance

of the Beckwith patent in 1874. Most of the cases cited by appellant, wherein it was held that the claimant of the fee was an indispensable party, were between private litigants and did not present the impossible situation with which appellees are confronted here. As pointed out in those cases the basic reason for declining to determine title against an absent claimant, is that it would open the door for fraud between lessees or other possessors holding under the true owner, and third persons. Here, however, if the contentions of the appellant were sustained, in the state of this record, a greater injustice might result. If the State should refuse to raise the question of its title in a proper action, we know of no way in which appellees could find relief, except by proving a valid title based upon a patent, against those in possession under the lease from the State with only a color of right, treating them as trespassers, as has been done in other instances where the sovereign declined to become a party. If such relief were not available, the true owner might be compelled to stand by and see his property denuded of large values of oil, timber, etc., without recourse, which would amount to a taking of his property by the State, not for a public purpose for which it would have to pay under both the State and Federal Constitutions, but for purely private profit.

In *Dreux, et al., v. Kennedy, et al.*, 12 Robinson (La. Rep.) 489, 504, the legal complications were substantially the same as here, except there The United States was the alleged owner, who could not be sued without its consent yet the persons sued contended it was an indispensable party. The case was for this reason dismissed below, but on appeal that judgment was reversed, and Justice Bullard, as the organ of the Court made a care-

ful analysis of the circumstances, as well as the origin and history of title actions. The property in dispute was, at the filing of the complaint, in possession of agents of the United States as a branch mint. Plaintiffs claimed prior title under their ancestors and brought the suit, against the officers or employees in actual possession, under a donation from the City of New Orleans made in 1835, approximately ten years before the action was commenced. The defendants' motion to dismiss alleged that having revealed the United States as the owner as required by Art. 43 of The Code of Practice, and it being impossible for plaintiffs to implead the Government, the trial court could do nothing but dismiss the suit. In disposing of that contention, the Supreme Court of Louisiana (Pages 501, 503) said:

> "It is quite clear, that the United States cannot be sued in any court as a party defendant on the record; but it appears settled that in the other States, actions may be brought and maintained against public officers, when the government alone is a party in interest; and this is particularly the case in actions of ejectment. In the opinion of the Supreme Court of the United States in the case of Wilcox v. Jackson, to which we shall have occasion to recur again for a different purpose, it is said by Mr. Justice Barbour:
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> 'This then being the case, and this suit having been in effect against the United States, to hold that the party could recover as to them, would be to hold that a party having an inchoate and imperfect title, could recover against one in whom resided the perfect title.'

Thus the decision of that case, which was an ejectment against an officer of the army holding under the United States, turned upon this distinction; that although by the law of Illinois a certificate of purchase and a patent certificate, without a patent, (inchoate titles,) were sufficient to maintain an action of ejectment in relation to lands severed from the domain, and in ordinary cases, yet when the action is against one holding under the United States, and the government is substantially a party in interest, *a recovery could not be had without a patent; and the plaintiffs failed because no patent had ever issued, and the legal title was in the United States.* In that case the judgment in the State court was for the plaintiffs, and the United States, regarding their officer as a mere nominal party, prosecuted the writ of error themselves. No question was made as to the form of the action. The court held that:

'Whenever the question in any court, State or Federal, is whether a title to land which had been once the property of the United States has passed, that question must be solved by the laws of the United States; *but that whenever, according to those laws, the title shall have passed, then that property, like all other property in the State is subject to State legislation; so far as that legislation is consistent with the admission that the title passed and vested according to the laws of the United States.*' 13 Peters, 498 [10 L. Ed. 264].

The rule which governs actions of ejectment at common law appears to be, that after service

of the ejectment, which is upon the tenant in possession, the defendant should, in case he means to defend the title, appear and confess lease, entry and ouster, which brings the title only into issue. Where the tenant has not given notice to his landlord, which he is bound to do in England under severe penalties, and there is judgment against the casual ejector, the court will set aside the judgment on the landlord's entering into the usual rule to try the title; or the landlord may bring a writ of error, which will be a supersedeas of the proceedings. Espinasse's Nisi Prius, 443.

That the jurisdiction of a State is coextensive with its territory and its legislation, except where it has consented to part with any portion of it under the constitution of the United States, is a proposition which cannot be combated. It applies to every portion of its soil, which has been severed from the public domain. [People v. Godfrey] 17 Johnson [N. Y.] 233. Sergeants' Constitutional Law, 266 [Wilcox v. Jackson] 13 Peters, loco citato [498, 10 L. Ed. 264]; [United States v. Cornell] 2 Mason, 60 [Fed. Cas. No. 14,867].

In the case of an illegal taking of property by an officer acting under the authority of the United States, and for the use and benefit of the government, we do not doubt but that an action would lie against the officer, or agent, of the United States, although the party in interest would be the United States. In such cases jurisdiction is neither given nor ousted by the parties concerned in in-

terest, but by the relative situation of the parties named on the record.

'If,' says the court in Osborn v. The Bank of the United States:

'The person who is the real principal, the person who is the real source of the mischief, by whose power and for whose advantage it is done, *be himself above the law, be exempt from all judicial process, it would be subversive of the best established principles to say, that the law could not afford the same remedies against the agents employed in doing the wrong which they would afford against him, could his principal be joined in the suit.*' 9 Wheaton, 738 [6 L. Ed. 204].

In the case of United States, ex rel. Stokes, et al., v. Kendall [Fed. Cas. No. 15,517] *that officer had no personal interest in the matter, and the amount to be allowed was to be paid out of the treasury of the United States.*

Upon the whole we conclude, that, if, when the party in possession, who is sued in such an action points out the owner under whom he holds, he is bound to defend the action, if such owner does not live in the State, and is not represented in it; still more should be so, when such proprietor, lessor or principal is the United States, against whom no direct action can be brought. If it were not so, the clearest right might be defeated, and the party suing be without remedy. The court, therefore, in our opinion erred in sustaining the exceptions." (Emphasis Supplied).

Alleged errors Nos. 3, 4 and 5 are more or less covered by what has been said in disposing Nos. 1 and 2 and we do not deem it necessary to discuss them separately. Suffice it to say that as held by the Court below, plaintiffs have proven their title as good against Appellant, and the judgment appealed from is

AFFIRMED.

A True Copy:
Teste:
[Seal]

/s/ JOHN A. FEEHAN, JR.,
Clerk of the United States Court of
Appeals for the Fifth Circuit.